THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.6794 OF 2005

ORDER:

This writ petition is filed challenging the letter of the second respondent in Lr.SE/OP/SAO/HT/D.No.516/04, dated 09.03.2005.

2. The petitioner is an industry situated at Gudur Village, Bibinagar Mandal, Nalgonda District. It entered into an agreement dated 05.09.1984 with the respondents for supply of contracted maximum demand of 500 KVA. Due to its reduced production and power cuts, the petitioner was constrained to shift from electricity to gas. The petitioner, by its letter dated 25.09.1993, requested the second respondent to de-rate the contracted load from 500 KVA to 250 KVA. The second respondent by his letter dated 30.10.1993 has recommended the request of the petitioner to the Divisional Engineer for reduction of contracted maximum demand. The petitioner faced huge losses and has become sick one. Thereafter, in spite of considering the request of the petitioner, the respondents sent electricity bills for the contracted maximum demand of 500 KVA for the months from October, 1990 to August, 1993, according to the aforesaid agreement. Questioning the same, the petitioner filed O.S.No.1080 of 1993 on the file of the Court of V Additional Civil Judge, City Civil Court, Hyderabad and the same was dismissed. During the pendency of the suit also, the respondents did not consider the request of the petitioner

for reduction of the contracted maximum demand. The petitioner again sent a reminder dated 01.03.2001 to the respondents, but the respondents did not take any action. Thereafter, the respondents issued a notice dated 13.03.2001 calling upon the petitioner to pay arrears in an amount of Rs.38,27,818/- together with current consumption charges. Challenging the same, the petitioner filed W.P.No.5518 of 2001 and this Court granted interim order dated 28.03.2001 granted interim stay of disconnection of power supply on condition of the petitioner depositing 50% of the demanded amount. Thereafter, this Court disposed of the said writ petition by order dated 13.09.2001 directing the respondents to consider the request of the petitioner for reduction of the contracted maximum demand. In pursuance of the same, the respondents passed the impugned order rejecting the request of the petitioner and demanded the petitioner to pay balance amount of Rs.19,13,909/- with interest and surcharge applicable as per Rules. Questioning the same, the petitioner filed the present writ petition.

3. Sri V.Ravinder Rao, learned Senior Counsel representing Smt.Gyanam Sandhya Rani, learned counsel for the petitioner, argued that the petitioner did not consume the power, but for the failure of the respondents in considering the request of the petitioner for de-ration, the arrears have been accrued and that the arrears are paper arrears and not actual consumption charges. She placed reliance of a judgment of this Court in **Makkariya Cotton and Oil**

Trading Co. v. TRANSCO Ltd.[1] and argued that in the said case also, when the respondents delayed in considering the request of the petitioner therein for a deration, this Court directed the respondents therein to treat the earlier notice of the petitioner as a statutory notice and give power deration from that date. She further contended that the present case squarely covers the said case and sought to dispose of the present writ petition in the similar lines.

4. Sri Vinod Reddy, learned Standing Counsel for the respondents, has drawn the attention of this Court to the impugned order and submitted that for the months of September, 2000, December, 2001, January, 2002, February, 2002, April, 2002 and July, 2002, the petitioner has consumed more than 250 KVA and hence, it is not entitled for any relief.

5. A perusal of the record, it is clear that it is totally lethargic attitude of the respondents in not acting immediately upon the representations of the petitioner due to which the petitioner was asked to pay charges without availing the electricity. When the petitioner categorically expressed about the irregular power cuts and it has become sick unit and requested the respondents to derate contracted maximum demand of 500 KVA to 250 KVA, it was not open to the respondents to sleep over the matter and they ought to have acted diligently. On one hand encouraging entrepreneurs by providing schemes and on the other hand

[1] ALT-2000-4-192

overburdening the entrepreneurs with the overheads is unwarranted and the action of the respondents cannot be appreciated. If the respondents have acted diligently upon the representations of the petitioner, the petitioner would not have been notified as a defaulter.

6. Admittedly, the arrears are not actual consumption charges, but they are only calculation on paper in pursuance of the aforesaid agreement entered between the petitioner and the respondents. Insofar as the excess power used during the aforesaid six months is concerned, it is only a minimal and negligible amount of surplus power consumption out of 140 months.

7. Accordingly, the writ petition is disposed of setting aside the order of the second respondent in Lr.No.SE/OP/NLG/SAO/HT/D.No.516/04, dated 09.03.2005, with a direction to the respondents to consider the case of the petitioner for deration from 500 KVA to 250 KVA and also to refund the amount deposited in pursuance of the order in WP.No.5518 of 2001, dated 13.09.2001, by deducting the amount equivalent to consumption of electricity over and above 250 KVA. No costs. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 13.07.2018
TJMR